

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
NATIONAL SCIENCE AND TECHNOLOGY)	
NETWORK, INC.)	FCC File No. D147244
)	
Petition for Reconsideration of Dismissal of)	
Application for Authority to Operate a Private)	
Land Mobile Radio Service System in the)	
470-512 MHz Band)	

ORDER ON RECONSIDERATION

Adopted: March 28, 2002

Released: March 29, 2002

By the Acting Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us a petition for reconsideration (Petition) submitted by National Science and Technology Network, Inc. (NSTN) on September 20, 2001.¹ NSTN requests reconsideration of the August 27, 2001 action by the Licensing and Technical Analysis Branch (Branch), Public Safety and Private Wireless Division, Wireless Telecommunications Bureau dismissing the above-captioned application.² For the reasons discussed below, we deny the Petition.

2. *Background.* On September 21, 2000, NSTN filed an application for a trunked, temporary private land mobile radio service (PLMRS) station in the 470-512 MHz band.³ On August 27, 2001, the Branch dismissed the application as defective “because it proposes to operate on 6.25 kHz offset channels with a bandwidth greater than 6 kHz.”⁴ NSTN filed the instant Petition seeking reconsideration of the dismissal and reinstatement of the application “to its rightful place in the processing line.”⁵

3. *Discussion.* NSTN offers three reasons why it believes the Branch’s action should be reversed. First, NSTN claims that the dismissal was based on “non existent rules” and should therefore be reversed.⁶ Second, NSTN argues that because only three of the nine frequency pairs requested in the application are subject to the requirement to operate with a bandwidth of no more than 6 kHz, the “entire

¹ National Science and Technology Network, Inc. Petition for Reconsideration, filed Sept. 20, 2001 (Petition).

² Automated Dismissal Letter, Reference No. 1048096, dated Aug. 27, 2001 (Dismissal Letter).

³ FCC File No. D147244, filed Sept. 21, 2000.

⁴ Dismissal Letter.

⁵ Petition at 2.

⁶ *Id.* at 1-2.

application obviously should not be dismissed.”⁷ Finally, NSTN states that its use of incorrect emission designators is a minor matter that should not have resulted in the dismissal of its application.⁸

4. In support of its assertion that the Branch’s dismissal of the application was based on a non-existent rule, NSTN states that:

The Bureau cited as the basis for its decision a 1995 document entitled “Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies governing them...” This proposed rule change from Part 90 to Part 88 was never enacted into law. The FCC continues to use Part 90, which is in full force and effect at the present time. It is axiomatic that a decision based on a non-existent rule or law should be reconsidered and reversed.⁹

This argument is specious. In the *Refarming R&O*, the Commission stated that “[a]pplicants requesting to operate on frequencies in the 150-174 MHz and 421-512 MHz bands with a 6.25 kHz channel bandwidth will be authorized a maximum bandwidth of 6 kHz.”¹⁰ This requirement became effective on August 18, 1995.¹¹ In the 450-470 MHz band, this limitation is codified at 47 C.F.R. § 90.20 n.44 and 47 C.F.R. § 90.35 n.33. In the 470-512 MHz band, this limitation is not codified in a specific rule because the specific frequencies available in that band are not listed in the Commission’s Rules.

5. In addition, we disagree with NSTN’s unsupported contention that the Branch should not have dismissed the “entire application” because not all of the requested frequency pairs proposed operation in excess of the maximum allowable bandwidth or that incorrect emission designators are minor matters.¹² Section 1.934 of the Commission’s Rules is clear that an application may be dismissed as defective if “[i]t requests an authorization that would not comply with one or more of the Commission’s rules and does not contain a request for waiver of these rule(s).”¹³ As demonstrated above, NSTN’s application does not comply with the limitations applicable to the 6.25 kHz channels, and it did not

⁷ *Id.* at 1.

⁸ *Id.* at 2.

⁹ *Id.* at 1-2.

¹⁰ Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services, PR Docket No. 95-255, *Report and Order and Further Notice of Proposed Rule Making*, 10 FCC Rcd 10076, 10116 ¶ 80 (1995) (*Refarming R&O*).

¹¹ 60 Fed. Reg. 37152 (July 19, 1995). The Federal Register entry summarizes that “the[se] rules establish a new channelling plan, provide technical flexibility which will enable private wireless users to make equipment investment decisions to accommodate their diverse needs, and mandate consolidation and suggest an initial framework for the PLMR services. Finally, *the Commission has decided not to replace 47 CFR part 90, with 47 CFR part 88 at this time.*” (Emphasis added).

¹² *Id.* at 1.

¹³ 47 C.F.R. § 1.934(d)(2).

request any waiver of that limitation. Consequently, we find that the Branch properly dismissed the application.¹⁴

6. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration submitted by National Science and Technology Network, Inc. on September 20, 2001 IS DENIED.

7. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Barry J. Ohlson
Acting Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

¹⁴ See National Science and Technology Network, Inc., *Order on Reconsideration*, 16 FCC Rcd 18719, 18722 ¶ 7 (WTB PSPWD 2001), *pet. for recon. pending*.